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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

GERALD FISHER, Plaintiff and Appellant, v. INTERNATIONAL COFFEE & TEA, LLC, Defendant and Respondent.	B237127 (Los Angeles County Super. Ct. No. BC 456878)

APPEAL from a judgment of the Superior Court of Los Angeles County, Deirdre H. Hill, Judge. Reversed.

Law Offices of Peter B. O'Brien, Peter B. O'Brien and Kelly L. Duenckel for Plaintiff and Appellant.

Freeman, Freeman & Smiley, Dawn B. Eyerly and Joel G. Weinberg for Defendant and Respondent.

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In this personal injury action, plaintiff Gerald Fisher appeals from an order of dismissal entered after the court sustained the demurrer of defendant International Coffee & Tea, LLC (ICT)[1] without leave to amend. The trial court sustained ICT's demurrer on res judicata and other grounds, based on an earlier federal class action lawsuit, *Pizarro v. International Coffee & Tea, LLC* (C.D. Cal. Case No. CV 06-7448) (*Pizarro*). We conclude that the trial court erred in sustaining the demurrer and reverse. At the same time, resolution of this matter requires interpretation of the *Pizarro* settlement agreement and final approval order. Because the federal court reserved exclusive jurisdiction to interpret and enforce the settlement agreement and order, the appropriate course is to stay all proceedings in this action until the *Pizarro* court resolves the interpretation and enforcement issues.

FACTUAL AND PROCEDURAL HISTORY

1. Allegations of Fisher's Complaint

Fisher filed a complaint against ICT and three unrelated defendants on March 8, 2011. The complaint alleges as follows. On or about March 9, 2010, Fisher was at the Coffee Bean & Tea Leaf location at 6922 Hollywood Boulevard, which was owned and operated by ICT. Fisher was in a wheelchair. He fell from a raised platform that was outside a door to the premises. There was no ramp, properly marked steps, warning signs, or alternate routes of exit to accommodate those with disabilities and in wheelchairs. The exit, platform, and step were known to ICT and its staff as dangerous and needing repairs, further warnings, and/or ramps or exit protocols. ICT was negligent and had a duty to construct and maintain the platform and step so as to protect against a dangerous and defective condition for wheelchair bound patrons. Prior to Fisher's fall, ICT knew that the exit, step, and platform from which he fell were defective to such an extent as to pose a danger to those wheelchair bound patrons who needed to use them.

Fisher alleges causes of action against ICT for negligence and premises liability. He is seeking general damages, punitive damages, and attorney fees and costs. He also alleges causes of action for medical neglect and violation of the Elder Abuse and Dependent Adult

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[1] Fisher erroneously sued ICT as Coffee Bean & Tea Leaf Inc.

Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.) against the hospital, nursing home, and doctor that treated him after his fall. Those causes of action are not at issue and those defendants are not parties to this appeal.

2. Pizarro *Action*

The *Pizarro* lawsuit was a putative class action brought in the United States District Court for the Central District of California. The named plaintiffs brought the action on behalf of themselves and a class consisting of mobility impaired/wheelchair bound persons and hearing and visually impaired persons. The plaintiffs filed the second amended class action complaint on March 20, 2007, against ICT and alleged violations of the Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51 et seq.),[2] California's Disabled Persons Act (DPA) (§ 54 et seq.), and the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12101 et seq.). They sought injunctive relief and statutory damages.

The *Pizarro* complaint alleged that ICT discriminated against people who are disabled in ways that blocked them from equal access to and use of ICT's Coffee Bean & Tea Leaf stores, in violation of the ADA, DPA, and Unruh Act. The Coffee Bean & Tea Leaf location at 6922 Hollywood Boulevard was one of the premises at which there were barriers to equal access.

a. *Pizarro* Settlement Agreement

On November 16, 2007, the parties in *Pizarro* filed a settlement agreement with the court. The pertinent terms were as follows:

- The agreement applied to all Coffee Bean & Tea Leaf stores in California, including the one at 6922 Hollywood Boulevard.
- The agreement defined the settlement class as all persons who were represented by the named plaintiffs and who, at any time from October 24, 2005, through the term of the agreement, were mobility impaired and used wheelchairs, or were vision or hearing impaired, and who patronized any Coffee Bean & Tea Leaf store.

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[2] All further statutory references are to the Civil Code unless otherwise stated.

- The term of the agreement expired 30 months after the court granted final approval of the settlement.
- ICT agreed to bring its Coffee Bean & Tea Leaf Stores into compliance with the standards for accessibility under the ADA, Unruh Act, and DPA, and maintain the premises in operable and working condition under those standards.
- ICT agreed to pay $500,000 to settle all claims for "Statutory Minimum Damages" in the complaint. The agreement defines statutory minimum damages as any minimum damages available under section 52 (for violations of the Unruh Act) and section 54.3 (for violations of the DPA), and any other statute, code, or law providing for minimum damages for violations of these statutes.
- Any potential settlement class member could opt out of the class for purposes of monetary relief only. No potential settlement class member could opt out of for purposes of injunctive relief.
- Released Damages Claims: The settlement class members agreed to release their injunctive relief claims and their statutory minimum damages claims. The released statutory damages claims were "any and all claims, rights, demands, charges, complaints, actions, suits, causes of action, and liabilities of any kind, whether known or unknown, suspected or unsuspected, accrued or unaccrued, for Statutory Minimum Damages based upon conduct preceding Final Approval of this Agreement that were brought, could have been brought or could be brought now or in the future that relate in any way to the accessibility of Coffee Bean Stores or Closed Coffee Bean Stores to persons who are mobility impaired, who use wheelchairs or scooters for mobility, or who are vision or hearing impaired."
    - The released statutory minimum damages claims also included claims based on conduct that occurred after final approval and during the term of the agreement.

- The released damages claims did *not* include "any claims, rights, demands, charges, complaints, actions, causes of action or liabilities for any damages other than Statutory Minimum Damages."

- Covenant Not to Sue: The settlement class members "covenant[ed] and agree[d] never to file or institute against any of the Coffee Bean Parties any claim, right, demand, charge, complaint, suit, cause of action, action, liability or proceeding of any kind or nature whatsoever, whether at law, in equity or otherwise, in or before any court, administrative agency, arbitral panel or other tribunal wherever situated, asserting, directly or indirectly, any Released Damages Claim or any claim, demand, cause or right of action of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, based upon or arising out of the Released Damages Claim."
- Waiver of Section 1542 Rights:[3] The settlement class members expressly agreed "that this AGREEMENT extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future, arising from or attributable to any conduct of the Coffee Bean Parties, whether known by the Releasing Parties or whether or not any Releasing Party believes he or she may have any claims, and that any and all rights granted to the Releasing Party under Section 1542 of the California Civil Code or any analogous state law or federal law or regulations, are hereby expressly WAIVED . . . ."
- Reservation of Jurisdiction: The settlement agreement provided: "[T]he Final Judgment and Order shall attach this Agreement as an exhibit and shall provide that the Court retains jurisdiction through the Term of this Agreement in order to enforce this Agreement." It also provided: "The Parties agree that the United States District

[3] Section 1542 provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Court for the Central District of California shall have continuing jurisdiction throughout the Term of this Agreement to interpret and enforce this Agreement."

b. Approval of the *Pizarro* Settlement

On December 11, 2007, the court in *Pizarro* entered an order preliminarily approving the settlement and approving the parties' plan to provide notice to the potential settlement class members. The court held the final approval hearing on May 19, 2008. It filed the final approval order and judgment on the same date. It found the notice provided to potential settlement class members to be the best notice practicable under the circumstances and compliant with the applicable law. No class members had requested exclusion from or objected to the settlement.

As provided for in the settlement agreement, the court certified a class of all persons who, at any time from October 24, 2005, through the term of the agreement (approximately December 2010),[4] were mobility impaired and used wheelchairs, or who were vision or hearing impaired, and who patronized any Coffee Bean & Tea Leaf store, or who alleged they would have patronized a store, had they not been denied access. The court approved the settlement as fair, reasonable, and adequate.

Consistent with provisions of the settlement agreement, the final approval order decreed that the court had "jurisdiction over the subject matter of the Action, the Lead Plaintiff, the other Members of the Settlement Class, and the Defendants." Further, the court "reserve[d] exclusive and continuing jurisdiction over the Action, the Lead Plaintiff, the Class and the Released Persons for the purposes of: (1) supervising the implementation, enforcement, construction, and interpretation of the Agreement, the Plan of Allocation, and this Final Order and Judgment; (2) hearing and determining any additional application by Lead Counsel for an award of attorneys' fees, costs, and expenses; and (3) supervising the

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[4] The final approval order became final and nonappealable on or around June 19, 2008, 30 days after its entry. (Fed. Rules App. Proc., rule 4(a)(1).) The parties agreed the term of the settlement agreement would be 30 months after that, which was approximately December 19, 2010.

distribution of the Settlement Fund." The order also decreed: "The court shall retain jurisdiction to enforce the Settlement Agreement."

3. ICT's Demurrer in the Instant Action

ICT demurred to Fisher's complaint on several grounds and requested judicial notice of the second amended complaint and settlement documents in *Pizarro*. The *Pizarro* settlement documents consisted of the settlement agreement and exhibits filed with the court, the preliminary approval order, and the final approval order and judgment. The court granted judicial notice of the *Pizarro* documents and sustained the demurrer without leave to amend, ruling:

> "This action is barred by res judicata -- both cases [the *Pizarro* case and this case] involve a complaint that plaintiff suffered barriers to accessibility at the same Coffee Bean store, wherein he was injured. The prior class action proceeding resulted in a final judgment and the party against whom the doctrine is being asserted was a party with plaintiff, a Class member, to the prior proceeding. Further, in the Settlement Agreement, as a Class member, plaintiff released any damage claims that could be brought in the future that relate in any way to the accessibility of Coffee Bean stores. Plaintiff's claims relate to the accessibility of a Coffee Bean store. Plaintiff also agreed that the Settlement Agreement 'extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future, arising from or attributable to any conduct of' ICT. The Court finds the waiver is operative to exclude plaintiff from pursuing claims related to barriers to accessibility in the instant action. Plaintiff's incident occurred on 3/9/10, during the time frame of the Settlement Agreement. Further, the parties agreed that the U.S. District Court shall have continuing jurisdiction to interpret and enforce the Settlement Agreement."

The court filed an order of dismissal of the two causes of action against ICT for negligence and premises liability on September 7, 2011. Fisher timely filed a notice of appeal.

STANDARD OF REVIEW

"On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, [t]he reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court

does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed 'if any one of the several grounds of demurrer is well taken. [Citations.]' [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) "Additionally, dismissal on res judicata grounds presents a question of law, which we review de novo." (*Louie v. BFS Retail & Commercial Operations, LLC* (2009) 178 Cal.App.4th 1544, 1553.)

In reviewing the sufficiency of a complaint against a demurrer, we also consider matters which may be judicially noticed. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "We review the trial court's ruling on the request for judicial notice for abuse of discretion." (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264.)

DISCUSSION

Fisher contends that the court erred in sustaining ICT's demurrer without leave to amend and that the court erred in taking judicial notice of the *Pizarro* documents. ICT contends that there were several meritorious grounds for sustaining the demurrer, including: (1) the *Pizarro* judgment is res judicata; (2) Fisher expressly released the instant claims in the *Pizarro* settlement; (3) the state court lacks jurisdiction over this suit because the federal court in *Pizarro* has exclusive jurisdiction; and (4) Fisher's admission in the complaint that the alleged dangerous condition of the platform was "obvious" bars his suit.

We disagree with Fisher that the court erred in taking judicial notice of the *Pizarro* documents, but agree that the court erred in sustaining ICT's demurrer. ICT's res judicata argument and the argument that an admission of obviousness bars the suit are not well taken. As to ICT's final two arguments, we lack jurisdiction to resolve the argument that Fisher released his claims in the *Pizarro* settlement, because the federal court reserved exclusive jurisdiction of the issue. We conclude that the appropriate course is not a dismissal of this action, but a stay to permit the federal court's exercise of jurisdiction.

1. The Trial Court Did Not Abuse Its Discretion in Taking Judicial Notice of the **Pizarro** *Documents*

A court may take judicial notice of the records of any court of this state. (Evid. Code, § 452, subd. (d)(1).) Fisher asserts, however, that the *Pizarro* documents are hearsay allegations, and the "court *cannot* take judicial notice of *hearsay allegations* as being true, just because they are part of a court record or file." (*Day v. Sharp* (1975) 50 Cal.App.3d 904, 914.) Fisher mischaracterizes the effect of taking judicial notice of the documents. The court did not consider the allegations of the documents for the truth of the matters asserted. It considered the documents as evidence of the claims asserted and evidence of the existence of the releases agreed to by the parties. (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564-1565.) This is a routine application of judicial notice when a litigant contends a prior action bars a present action under the doctrine of res judicata or collateral estoppel. (E.g., *Western Mutual Ins. Co. v. Yamamoto* (1994) 29 Cal.App.4th 1474, 1485; *Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, 192.)

Fisher also contends that the court erred because ICT did not introduce certified copies of the documents until the hearing on the demurrer, depriving him of sufficient time to prepare to meet the request. We find this argument specious. Well before the hearing, ICT served its notice of demurrer and request for judicial notice, attaching copies of the *Pizarro* documents. Those documents initially served were not certified copies of the *Pizarro* documents. That was the only difference between those documents and the *Pizarro* documents introduced on the day of the hearing. As such, ICT did not deprive Fisher of sufficient time to review the documents and meet the request. The trial court did not abuse its discretion in taking judicial notice of them.

2. The **Pizarro** *Judgment Is Not Res Judicata*

ICT contends that the *Pizarro* judgment is res judicata and completely bars this action. We disagree.

The doctrine of res judicata "precludes parties or their privities from relitigating a cause of action that has been finally determined by a court of competent jurisdiction." (*Gamble v. General Foods Corp.* (1991) 229 Cal.App.3d 893, 898.) The prerequisite

elements for applying the doctrine to a cause of action are (1) a cause of action raised in the present action is identical to a cause of action litigated in a prior proceeding, (2) the prior proceeding resulted in a final judgment on the merits, and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. (*Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th 550, 556.) A prior judgment is res judicata on causes of action that were raised or *could* have been raised, despite the fact that they were not expressly urged. (*Warga v. Cooper* (1996) 44 Cal.App.4th 371, 377-378.) But the party against whom res judicata is asserted must have had a full and fair opportunity to litigate the same cause of action in the former action. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219, 229; *Roos v. Red* (2005) 130 Cal.App.4th 870, 879.)

Here, res judicata does not apply because Fisher's causes of action are not identical to those asserted in the *Pizarro* action, nor could he have asserted his claims in *Pizarro*. California follows a primary right theory of res judicata. Under this theory, "a cause of action consists of 1) a primary right possessed by the plaintiff, 2) a corresponding primary duty devolving upon the defendant, and 3) a delict or wrong done by the defendant which consists in a breach of such primary right and duty." (*Gamble v. General Foods Corp., supra*, 229 Cal.App.3d at p. 898.) "The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action." (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 681.) When "an action is filed in a California state court and the defendant claims the suit is barred by a final federal judgment, California law will determine the res judicata effect of the prior federal court judgment on the basis of whether the federal and state actions involve the same primary right." (*Gamble v. General Foods Corp.*, at p. 898.)

"As far as its content is concerned, the primary right is simply the plaintiff's right to be free from the particular injury suffered. [Citation.] It must therefore be distinguished from the *legal theory* on which liability for that injury is premised: 'Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief.' [Citation.] The primary right must also be distinguished from the

remedy sought: 'The violation of one primary right constitutes a single cause of action, though it may entitle the injured party to many forms of relief, and the relief is not to be confounded with the cause of action, one not being determinative of the other.'" (*Crowley v. Katleman, supra*, 8 Cal.4th at pp. 681-682.)

ICT asserts that *Pizarro* and this action involve the same primary right. At issue in both, ICT urges, is the right to be free from "barriers to accessibility." It further urges that in both actions, Fisher complains (either in his own right or as an absent settlement class member) that he suffered barriers to accessibility at the Coffee Bean & Tea Leaf and, as a result, he was damaged.

ICT misidentifies the primary right involved here. This is not merely a case of Fisher pursuing a different legal theory or different remedy for violation of the same primary right as in *Pizarro*. Fisher's claims for negligence assert the primary right to be free from personal injury. (*Slater v. Blackwood* (1975) 15 Cal.3d 791, 794-795 [primary right alleged to have been violated in negligence cause of action was "plaintiff's right to be free from injury to her person"]; *Panos v. Great Western Packing Co.* (1943) 21 Cal.2d 636, 639 [negligence cause of action is "based upon the primary right of the plaintiff to be free from injury to his person or property and a violation by the defendant of that right through his failure to use proper care"].) Premises liability is a form of negligence "and is described as follows: The owner [or possessor] of premises is under a duty to exercise ordinary care in the management of such premises in order to avoid exposing persons to an unreasonable risk of harm. A failure to fulfill this duty is negligence." (*Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619; see also *Fitch v. LeBeau* (1969) 1 Cal.App.3d 320, 324.) Accordingly, like negligence, the primary right asserted in such a claim is the right to be free from personal injury.

As ICT concedes, this was not the primary right at issue in *Pizarro*. ICT acknowledges that *Pizarro* concerned the right of disabled persons to be free from barriers to equal access. This is apparent when one examines the statutes providing the basis for the *Pizarro* claims. The Unruh Act "'"is a public accommodations statute that focuses on discriminatory behavior by business establishments . . . ."' [Citation.] The purpose of the

[Unruh] Act is '"to compel recognition of the equality of all persons in the right to the particular service offered by an organization or entity covered by the act."'" (*Ramirez v. Wong* (2010) 188 Cal.App.4th 1480, 1485.) "The DPA is 'intended to secure to disabled persons the "same right as the general public to the full and free use" of facilities open to the public.'" (*Turner v. Association of American Medical Colleges* (2008) 167 Cal.App.4th 1401, 1412.) The DPA, in particular, while offering a private right of action for damages, is not intended "to provide a cause of action for disabled persons *who have suffered physical injury* but to persons who have been denied the same access to public facilities as persons without a disability. . . . '[T]he impediments to the physically handicappeds' interaction in community life is the inequity which [the DPA] . . . seek[s] to prevent.'" (*Urhausen v. Longs Drug Stores California, Inc.* (2007) 155 Cal.App.4th 254, 264, fn. omitted.) And the purpose of the ADA is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." (42 U.S.C.S. § 12101, subd. (b)(1).) In sum, these are anti-discrimination statutes. The primary right involved in *Pizarro* was the right to be free from discrimination based on a disability, or as ICT puts it, to be free from barriers to equal access.

The thrust of Fisher's complaint is not that he was denied access as a wheelchair bound patron. The thrust is that the only access available to him, the platform, was negligently maintained and constituted a dangerous condition, and as a result, he fell and injured himself. Even if it is discovered that ICT's premises fully complied with the ADA, DPA, and Unruh Act by providing the appropriate access to disabled patrons, this does not preclude the possibility that the platform was defective or negligently constructed or maintained. Statutory compliance is not necessarily a complete defense to tort liability. (See *Myrick v. Mastagni* (2010) 185 Cal.App.4th 1082, 1087, 1089 ["Generally courts have not looked favorably on the use of statutory compliance as a defense to tort liability."]; see also *Ramirez v. Plough, Inc.* (1993) 6 Cal.4th 539, 547-548.) These two cases, *Pizarro* and the instant action, do not involve the same primary right, and therefore the causes of action are not identical.

Additionally, Fisher's causes of action here could not have been raised in *Pizarro*. His causes of action did not accrue until March 2010, when he fell and was injured. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806 ["Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.'"].) This was several years after the court entered the final approval order and judgment in *Pizarro*. He could not have possibly had a full and fair opportunity to litigate his present claims during the pendency of the *Pizarro* action. ICT contends that res judicata bars the claims even if they could not have been presented in *Pizarro*. The law holds the exact opposite, however -- that res judicata bars only those claims which *could have* been presented. (*Warga v. Cooper, supra*, 44 Cal.App.4th 371, 377-378.) ICT relies on cases holding that a *settlement agreement* may release claims that were not brought or could not have been brought in the action. The effect of a release agreement, as opposed to res judicata, is a separate issue, which we discuss in a following part.

In conclusion, the *Pizarro* judgment is not res judicata. An essential element of res judicata is lacking because the causes of action asserted here and in *Pizarro* are not identical, and furthermore, Fisher could not have asserted his claims in *Pizarro*.

3. The Complaint's Allegation That the Dangerous Condition Was Obvious Does Not Bar This Action

ICT contends Fisher admitted in his complaint that the alleged dangerous condition was obvious, and because of this admission, he cannot sue for negligence or premises liability. We disagree.

The complaint alleges that ICT had actual and/or constructive notice of the dangerous condition on its premises (the platform) and knew, or should have known, of the dangerous condition. Further, "the dangerous condition existed for such a period of time and was [of] such an obvious nature that it should have been discovered" by ICT.

This bare allegation does not provide a complete defense to ICT. The law regarding the obviousness of a danger is not so simple. Statements to the effect "that a contractor or possessor of land cannot be liable for an injury caused by an obvious or observable danger [are] erroneous statements of the law, veritable shoals in the murky sea of duty, because

they purport to set forth a rule of liability without reference either to duty or to foreseeability of injury." (*Osborn v. Mission Ready Mix* (1990) 224 Cal.App.3d 104, 121, italics omitted.) "[A]lthough the obviousness of a danger may obviate the duty to *warn* of its existence, if it is *foreseeable* that the danger may cause injury despite the fact that it is obvious (e.g., when necessity requires persons to encounter it), there may be a duty to *remedy* the danger, and the breach of that duty may in turn form the basis for liability, if the breach of duty was a proximate cause of any injury." (*Id*. at p. 122.) Thus, even if the alleged dangerous condition was obvious, questions of fact regarding foreseeability would remain. The allegation is thus not dispositive.

4. The Federal Court Has Exclusive Jurisdiction to Interpret and Enforce the* Pizarro *Settlement Agreement and Final Approval Order

ICT contends that this action is barred because the courts of this state lack jurisdiction over this action. It contends that the federal court in *Pizarro* has exclusive jurisdiction over the action pursuant to the *Pizarro* settlement agreement and final approval order. We disagree that the federal court has exclusive jurisdiction over this entire action, but we find that it has exclusive jurisdiction to interpret and enforce the *Pizarro* settlement agreement and final approval order. ICT's defense has implicated the *Pizarro* settlement and final approval order. The appropriate resolution, however, is not a dismissal of this entire action.

"Enforcement of a settlement agreement 'is more than just a continuation or renewal of [the dismissed suit], and hence requires its own basis for jurisdiction.' [Citation.] Such a basis for jurisdiction may be furnished 'by separate provision (such as a provision "retaining jurisdiction" over the settlement agreement [in a court's order or final judgment]) or by incorporating the terms of the settlement agreement in the order.'" *Flanagan v. Arnaiz* (9th Cir. 1998) 143 F.3d 540, 544, quoting *Kokkonen v. Guardian Life Ins. Co. of America* (1994) 511 U.S. 375, 378, 381].) When a federal court expressly retains jurisdiction to enforce a federal court settlement, that jurisdiction is exclusive, even if the court's order retaining jurisdiction does not say so. (*Flanagan v. Arnaiz*, at p. 545.)

Here, the federal court in *Pizarro* validly retained exclusive jurisdiction to interpret and enforce the settlement agreement. The final approval order stated that the court was reserving exclusive and continuing jurisdiction over the action, the lead plaintiff, the class, and the released persons for purposes of, inter alia, enforcing, construing, and interpreting the settlement agreement and the final approval order.

ICT contended below and contends on appeal that the *Pizarro* settlement agreement provides a complete defense to this action because Fisher was part of the class, and as such, he released the claims at bar. This argument should be distinguished from the res judicata argument. If, as part of the settlement class, Fisher contracted to release the instant claims in the settlement agreement, that is a bar to this action separate and apart from res judicata.

As discussed and quoted in the Factual and Procedural History part, *ante*, the *Pizarro* settlement contained broad releases of claims, including certain damages claims and unknown, unaccrued claims, as well as a waiver of rights under section 1542. The final approval order also contained a waiver of rights under section 1542 and a description of "Settled Claims," and decreed that the settlement class members had released those claims. Fisher was arguably part of the settlement class because he was mobility impaired and used a wheelchair, and he patronized a Coffee Bean & Tea Leaf store during the term of the agreement. Whether Fisher's claims fall within the scope of the *Pizarro* settlement agreement and final approval order requires interpretation, construction, and possibly enforcement of the releases in the agreement and order. Inasmuch as the federal court has reserved exclusive jurisdiction over these issues, neither we nor the trial court can determine them or resolve the action as of yet.

Assuming the federal court determines that this action does not fall within the scope of the releases and is not barred thereby, the trial court otherwise has subject matter jurisdiction over the action and can resolve the action. (*Serrano v. Stefan Merli Plastering Co., Inc.* (2008) 162 Cal.App.4th 1014, 1029 ["The California Constitution confers broad subject matter jurisdiction on the superior court."].) For this reason, we think it appropriate not to dismiss the action against ICT as the trial court did, but to stay the action pending resolution of the issues by the *Pizarro* court.

DISPOSITION

The judgment is reversed and the cause is remanded to the superior court with directions to (1) vacate its order of dismissal as to ICT and its ruling sustaining ICT's demurrer without leave to amend, (2) enter a new order overruling ICT's demurrer, (3) direct the parties to take any and all action necessary to obtain from the *Pizarro* federal court an order determining whether Fisher's claims are barred by the releases in the *Pizarro* settlement agreement and/or final approval order, and (4) stay all proceedings in this action until these *Pizarro* federal court issues are resolved. The parties are to pay their own costs on appeal.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.